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BEFORE THE
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Geographic Partitioning and)
Spectrum Disaggregation by)
Commercial Mobile Radio)
Services Licensees)

Implementation of Section)
357 of the Communications)
Act --- Elimination of)
Market Entry Barriers)

WT Docket No. 96-148

CN Docket No. 96-113

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

CTIA supports the Commission's continuing efforts to ensure that CMRS licensees have the flexibility to provide consumers with innovative wireless services in a competitive marketplace. CTIA supports the proposed modifications to the Commission's cellular service rules governing geographic partitioning and spectrum disaggregation to the extent that the modifications: 1) allow full spectrum disaggregation for cellular licensees for the entire license term; 2) expand the cellular geographic partitioning rules to mirror those recently adopted for broadband PCS; 3) refrain from imposing any additional restrictions on the size of the partitioned area or the amount of spectrum disaggregated; and 4) include flexible license terms and construction requirements.

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COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to Section 1.429 of the Commission's Rules,
the Cellular Telecommunications Industry Association
("CTIA")¹ hereby submits its Comments in response to the
Further Notice of Proposed Rule Making in this proceeding.²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular, broadband personal communications services ("PCS"), enhanced specialized mobile radio, and mobile satellite services. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-148, GN Docket No. 96-113, FCC 96-474 (released December 20, 1996) ("Report and Order and Further Notice").

I. Full Spectrum Disaggregation is an Effective Means of Providing Cellular Licensees with the Flexibility Needed to Tailor Service Offerings to Meet Market Demands

Full spectrum disaggregation will allow cellular providers the flexibility to respond to market demands unleashed by both regulatory and technical developments. The Commission's statutory authority to auction licenses for certain spectrum-based services has resulted in the entrance of numerous new competitors in the wireless market. On January 14, 1997, the Commission completed its final auction for broadband PCS licenses, allowing for a total of 2,074 broadband PCS licenses issued or to be issued in 544 markets. As a result, at least six competitors for wireless services will be in each market.³ Additionally, the recent establishment of immediate disaggregation and full partitioning for broadband PCS providers will increase the potential number of competitors in any given market. Given this highly competitive environment, all broadband PCS and cellular providers will need full flexibility to respond to public demands for service by introducing innovative services and technologies. The ability to disaggregate cellular spectrum will allow providers to increase spectrum use efficiency and will promote the development of niche services.

³ See Report and Order.

The Commission's own regulatory changes also promote a demand for disaggregation across all CMRS, including cellular. For example, the Commission recently concluded that cellular providers should have the flexibility to provide both fixed and mobile services.⁴ The Commission replaced the old rules that limited certain CMRS providers to offering fixed services on an "ancillary" basis to mobile services in response to the desire of mobile service providers to provide a wide range of fixed service offerings and to combine fixed and mobile technologies into integrated service packages.⁵

Fixed wireless services such as wireless local loop are becoming a reality. Several wireline companies already have formed partnerships with cellular companies to deliver wireless services in rural areas.⁶ Wireline companies such as the rural LEC members of Minnesota Equal Access Network Services (MEANS) also won PCS licenses in the C Block auctions with the intent to deploy wireless local loops.⁷

⁴ Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8965 (1996) ("Flexible Service Order").

⁵ Flexible Service Order at ¶ 3.

⁶ Wireline companies in Minnesota, South Carolina, and Nebraska have formed such arrangements. F. Oscar Hines, "Telecommunications and Its Impact on Rural America," National Association of Development Organizations (NADO) Research Foundation White Paper at 35.

⁷ Dan Emerson, "Winning Bidders Prepare PCS Launch," Minneapolis-St. Paul CityBusiness, July 12, 1996, at 16.

The amount of spectrum required to provide this wireless, fixed service could be relatively small compared to the spectrum required to operate a mobile system because "[b]y concentrating resources on fixed rather than mobile service, wireless local loop can provide greater capacity at a lower cost than mobile services."⁸ Hence, wireless local loop technologies may create a demand for smaller blocks of spectrum in rural areas -- perfect candidates for partitioned and/or disaggregated spectrum. The added flexibility of disaggregation will benefit consumers and enable cellular providers to meet the market demands for fixed wireless services and enhance the efficient use of spectrum.

The competitive nature of the wireless industry spawns innovation and encourages efficiency. Permitting spectrum disaggregation provides cellular licensees with greater flexibility and allows market forces to dictate the

⁸ Nate Palmer, "The Wireless Local Loop: A Matter of Simple Economics," *Telephony Magazine*, June 3, 1996, at 61. See also Fred Dawson, "Local Loop Becoming Wireless Focal Point," *Wireless Week*, July 22, 1996, at 26 ("When you're operating in the fixed environment without the interference of mobiles you can expand the number of users per available spectrum"). Depending on the technology deployed, studies have noted various spectrum capacity requirements for fixed wireless services. For instance, in very rural areas with subscriber densities of less than 0.1 subscribers per square kilometer, only a duplex pair frequency allocation of 2.4 MHz would be required in certain frequency bands. "Connecting Rural Communities - Today's Wireless Access Solution," www.mpr-ruralradio.com.

efficient use of the spectrum. The proposed spectrum disaggregation rules will facilitate competition in the CMRS marketplace by providing more licensees per service area, and will allow smaller entities developing new services the opportunity to compete.

III. Regulatory Parity Requires that Full Spectrum Disaggregation and Partitioning Rules for the Cellular Service Mirror the Rules Adopted for Broadband PCS

In 1993, Congress amended Section 332 of the Communications Act and changed the regulatory regime of mobile services to ensure that "services that provide equivalent mobile services are regulated in the same manner."⁹ For this reason, Congress established "uniform rules" to govern CMRS offerings and directed the Commission "to review its rules and regulations to achieve regulatory parity among services that are substantially similar."¹⁰ In response to the Congressional directive to establish a regulatory scheme that accorded "similar services" similar regulatory treatment, the Commission determined that both cellular service and PCS should be classified as CMRS and, hence, should be governed by a uniform regulatory approach.¹¹ Regulatory parity dictates that the

⁹ H.R. Rep. No. 111, 103d Cong., 1st Sess. 262 (1993) ("House Report").

¹⁰ *Id.*

¹¹ See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1454, 1460 (1994).

partitioning and disaggregation rules for the cellular service be consistent with those rules governing other CMRS (i.e., broadband PCS).

In the Report and Order for this proceeding, the Commission adopted flexible partitioning and disaggregation rules for broadband PCS. The partitioning rules adopted for broadband PCS, however, are much broader in scope than those proposed for cellular services. Specifically, the broadband PCS rules allow licensees in the A, B, D, and E blocks to "apply to partition their licensed geographic service area or disaggregate their licensed spectrum at anytime following the grant of their licenses."¹² In contrast, the existing cellular partitioning rules only allow partitioning of license areas during the five-year fill-in period.¹³ Thus, only full license transfers may occur after the five-year fill-in period. Similarly, it is unclear whether the proposed disaggregation rules for cellular apply after the five-year fill-in period. Often times, however, the geographic boundaries associated with Metropolitan Statistical Areas ("MSAs") or Rural Service Areas ("RSAs") are not technically optimal after the licensee has built-out its system and can result in inefficient use of the spectrum. For instance, if a river constitutes a license boundary, service that has been deployed on either side of

¹² 47 C.F.R. § 24.714.

¹³ 47 C.F.R. § 22.947(b).

the river is impaired because rivers constitute poor radiofrequency boundaries. Licensees should therefore have the flexibility to partition licenses or disaggregate spectrum at any point during the license term in order to avoid this type of conflict, just as PCS licensees are allowed to do.

The Commission acknowledged that it expanded partitioning and disaggregation rules for broadband PCS in order to "permit open entry, allow flexibility, encourage technical efficiency, promote innovation and facilitate seamless networks."¹⁴ The same benefits justify extension of similar rules to cellular services. At the same time, a uniform approach among all CMRS is consistent with the clear Congressional intent to promote regulatory parity among mobile services and maintain a level playing field among CMRS providers.

III. The Commission Should not Impose any Additional Restrictions on the Size of the Partitioned Area or the Amount of Spectrum Disaggregated

The Commission should not impose any restrictions on the size of the partitioned area or the minimum amount of spectrum disaggregated because such restrictions defeat the Commission's goal of providing greater flexibility and efficiency in the use of spectrum. The size of the partitioned area and the amount of spectrum disaggregated are most efficiently optimized by the licensee's business

¹⁴ See Report and Order at ¶ 2.

strategies and market forces. For example, if a small business developed a niche market for a cellular service which requires only 30 kHz of spectrum, the imposition of a retention requirement of, say, 1 MHz would thwart the new entry by requiring it to obtain more spectrum than it needs.

The Commission's CMRS spectrum aggregation cap provides more than sufficient safeguards to protect against excessive concentration and anti-competitive conduct.¹⁵ In fact, the Commission has abandoned other restrictions, such as the PCS/cellular cross-ownership rule and the 40 MHz PCS spectrum cap, and retained the 45 MHz CMRS aggregation spectrum cap as "one of the most effective mechanisms" to avoid excessive concentration of licenses and promote the diversity of ownership mandated under Section 309(j) of the Communications Act.¹⁶ The imposition of any additional restrictions on the partitioned areas or limitations on the amount of disaggregated spectrum is unnecessary and is contrary to the Commission's goal of providing cellular and PCS providers with the flexibility they need in a competitive marketplace.¹⁷

¹⁵ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order in WT Docket No. 96-59, FCC 96-278, at ¶ 94-101 (released June 24, 1996) ("PCS/Cellular Cross-Ownership Order").

¹⁶ Id. at ¶ 102.

¹⁷ PCS/Cellular Cross-Ownership Order at ¶ 105.

IV. The Commission Should Adopt Flexible License Terms and Construction Requirements for Partitioned and Disaggregated Licenses

The existing build-out requirements for partitioned cellular licenses and the proposed requirements for disaggregated spectrum provide the parties with the needed flexibility.¹⁸ This approach allows the parties, rather than the Commission, to negotiate and select build-out options that best suit their business plans and strategies for the delivery of wireless services. While the Commission's proposal provides an appropriate equipoise between regulatory oversight and private business arrangements, the Commission also should permit the parties to develop other approaches to build-out, subject to Commission review and approval, that provide even greater

¹⁸ Under the current partitioning rules, whenever a partitioning agreement is executed, the parties must define in their agreements whether the partitioner shall retain the "expansion rights" for the partitioned portion of the market or whether the partitionee shall have those rights. The party that obtains the expansion rights for all or some of the unserved portion of the market then has the remainder of the original licensee's five-year build-out period to complete expansion to the remaining unserved portion of the market or be subject to unserved area applications. 47 C.F.R. 22.947(b)(1)-(2).

With respect to disaggregation, the Commission has proposed requiring parties seeking Commission approval of a cellular disaggregation agreement to include a certification as to which party will be responsible for building out the remainder of the market. Should that party fail to build out, the unserved portion of the market would be subject to unserved area applications. Notice at ¶ 104.

flexibility when needed to meet the goals of providing wireless services to all areas of the country.

Similarly, the Commission should adopt flexible license terms that conform with the licensing term requirements applicable to other CMRS providers (*i.e.*, broadband PCS). Currently, the cellular rules do not specifically state the license term or the renewal procedure for partitioned licenses. However, in the absence of a specific rule, the practice for cellular has been for the partitioned license term to begin anew when the partial assignment application is granted.

In the Report and Order, the Commission determined that allowing parties to "re-start" the broadband PCS license term from the date of the grant of the partial assignment could unnecessarily delay service to the affected areas and promote circumvention of the established license term rules.¹⁹ In light of these findings and in the interests of regulatory parity,²⁰ the same license terms should be applied to partitionees and disaggregates of cellular licenses.

¹⁹ Order at ¶ 77.

²⁰ See *supra*. Broadband PCS partitionees and disaggregates may hold their licenses for the remainder of the original licensee's ten-year license term. See Order at ¶ 76.

CONCLUSION

For the above reasons, CTIA respectfully requests that the Commission expand the cellular geographic partitioning rules and adopt disaggregation provisions similar to those adopted for broadband PCS.

Respectfully submitted,

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